IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/11/2004

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THE HONOURABLE Mr.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE Mr. JUSTICE T.V.MASILAMANI

Writ Appeal No. 45 of 2001

The Management of Coimbatore District
Central Co-operative Bank
rep. by its Special Officer, State Bank Road,
Coimbatore 641 018. ... Appellant

-Vs-

1. The Presiding Officer,
Labour Court, Coimbatore.

2. The Secretary,
Coimbatore District Cooperative Bank
Employees' Association,
(Registration No.2121), Gopalapuram,
Coimbatore - 641 018.

3. The Secretary,
Erode District Central Cooperative Bank
Retired Employees Welfare Association,
rep. by its Secretary, G.A.Kathirvelu

4. P.E.1 Erode District Central Cooperative Bank
represented by its Special Officer,
Bhavani Road, Erode - 3.
... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 18.9.2000 made in W.P.No.11948 of 1993 on the file of this Court.

!For Appellant :: Mr. Vijay Narayan, S.C. For
Mrs. Narmada Sampath

^For Respondents :: Mr. N.G.R. Prasad for
M/s. Row & Reddy - R2
Mr. R.N.amarnath - R3 & R4

:J U D G M E N T

(Judgment of the Court was delivered by P.D.DINAKARAN,J)

This writ appeal is directed against the order dated 18.9.2000 made in W.P.No.11948 of 1993 allowing the writ petition in part filed by the second respondent/union, who have challenged the award dated 24.12 .1991 passed by the first respondent/Labour Court.

2.1. For the purpose of convenience, the parties are referred to as arrayed in the writ petition. The writ petitioner/employees (hereinafter referred to 'employees') had raised an Industrial Dispute in I.D.No.15 of 1988 challenging the punishment imposed on 53 employees by the respondent/Management (hereinafter referred to as 'Management') with regard to an illegal strike conducted by the employees' union on 17.4.1972 pursuant to a strike notice dated 14.4.1972.

2.2. In the award passed by the Labour Court, the strike was held illegal, as the same was made in violation of Sections 22(1)(b), 22(1)(d) and 23(a) of the Industrial Disputes Act. Consequently, the punishment imposed on the 53 employees, namely, non payment of wages from the period of their suspension from 20.4.1972 to 16.1.1973 as well as stoppage of increment/increments with cumulative effect were held valid by an award dated 24.12.1991 made in I.D.No.15 of 1988, which was challenged by the employees's union in W.P.No.11948 of 1993.

3. Learned single Judge by an order dated 18.9.2000 confirmed the finding of the Labour Court with regard to the strike as illegal as well as the non-payment of wages during the period of suspension. However, with regard to the stoppage of increment/increments with cumulative effect it was held as follows:

".....
8. So far as the second punishment stated in the award is concerned, stoppage of 1 to 4 annual increments with cumulative effect, I am of the clear view that it is a harsh punishment. The penalty of stoppage of annual increment with cumulative effect will have far reaching order on the workmen on the following grounds; If it is without cumulative effect it will have the effect for one year, but it is with cumulative effect, it will have the effect through out the service and in the first round he will get the effect after his retirement, in the second round after his death and in the third round his family also will be affected automatically. Therefore, imposing the punishment of stoppage of increments, in a case of this nature. I am of the clear view that it is not valid under law and the order of punishments to various workmen for stoppage of increments is hereby set aside.
9. In the result, this writ petition is partly allowed confirming the withdrawal of wages for the period in question to various workmen and setting aside the order of punishment of stoppage of increment to the various workmen involved in the present case on hand. The second respondent is hereby directed to pay the arrears in respect of the stoppage of increment to the

workmen with interest at 12% per annum within 60 days from the date of receipt of a copy of this order. No costs.
Hence, the above writ appeal by the Management.

3. Mr. Vijay Narayan, learned senior counsel appearing for the appellant/management challenges the portion of the order of the learned single Judge dated 18.09.2000 in setting aside the punishment imposed on the 53 employees, namely, stoppage of increment/increments with cumulative effect. He contends that it is without any reason and justifies the stand taken by the Management that these 53 employees, who have prevented the other employees from attending the work deserve the punishment and the Court should not interfere with such punishment.
4. Per contra, Mr.N.G.R.Prasad, learned counsel appearing for the employees bringing to our notice that out of 212 employees, who participated in the strike, 134 employees joined the duty in the middle of the strike and only 53 employees joined after six months, as they were prevented to join under the order of suspension pending an enquiry and ultimately, 53 persons were also permitted to join duty foregoing the wages during the period of suspension, which itself be sufficient, particularly, when the Management has not imposed any punishment whatsoever to the 134 employees, who joined duty in the middle of the strike. He also brought to our notice the reason that weighed the learned single Judge, namely, the punishment of stoppage of increment/ increments with cumulative effect is too harsh, as it would have the effect through out the service and if it is without cumulative effect, it would have the effect of one year only.

5. We have given careful consideration to the submission of both sides.

6. The fact that out of 212 employees, who participated in the strike, 134 employees joined duty, who have not been punished what so ever, as they were also paid salary even during the period of suspension are not in dispute at all. In that view of the matter, of course, learned single Judge has rightly refused to interfere with the findings of the Labour Court with regard to the strike as illegal as well as the non-payment of wages during the period of suspension. However, the learned single Judge having observed that if the stoppage of increment/increments was without cumulative effect, it would have the effect for one year, but it was with cumulative effect, it would have the effect through out the service, we are of the considered opinion, that the learned single Judge ought not to have set aside the entire punishment of stoppage of increment with cumulative effect and directed the Management to pay with 12% interest.

7.1. Of course, it is a settled law that the question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect

which is, otherwise within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review vide Ranjit Thanku v. Union of India reported in (1987) 4 SCC 611.

7.2. The scope and jurisdiction of judicial review, apart from illegality, irrationality and procedural impropriety, are now extended to test the proportionality as well vide Council of Civil Service Unions V. Minister for the Civil Service reported in (1984) 3 All ER 935,9 50, holding as follows:

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second ' irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;...."

8. Applying the above yardstick of the facts of the case and taking note of the fact that the Management concededly had not imposed any punishment whatsoever to the 134 employees, who joined duty in the middle of the strike, We, therefore, incline to modify the order of the learned single Judge dated 18.09.2000 made in W.P.No.11948 of 1993 on the following terms:

There shall be a punishment of stoppage of increment/increments without cumulative effect to all the 53 employees, who challenged the award dated 24.12.1991 of the first respondent/Labour Court and the Management is directed to settle their dues without interest within a period of 90 days from the date of receipt of a copy of this order.

9. The writ appeal is disposed of on the above terms. No costs.

Index:Yes
Internet:Yes

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